IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 155 of 1985

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ARVINDBHAI CHINUBHAI (HUF)

Versus

COMMISSIONER OF INCOME TAX

Appearance:

MR JP SHAH for Petitioner

MR MANISH R BHATT for Respondent No. 1

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE A.R.DAVE

Date of decision: 10/10/2000

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

At the instance of the assessee, the following 2 questions have been referred to this Courts under the provisions of Section 256(1) of the Income Tax Act, 1961 for our opinion:-

"1. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that deduction u/s. 80T in respect of capital gain made on the sale of shares should be worked out after setting off the capital loss suffered on the sale of other shares?

2. Whether, the Appellate Tribunal has not erred in law and on facts in confirming the order of the Commissioner of Income-tax (Appeals) in directing the Income-tax Officer to take into consideration the depreciation on the value of shares of Sayaji M<ills Ltd., while computing the capital gain or loss arising on the sale of shares of Rajesh Textile Mills Ltd.?"

2. We have heard Learned Advocates Shri J.P.Shah, appearing for the assessee and Shri Akil Qureshi for the Revenue.

3. So far as the first question is concerned, it pertains to working out of deduction under the provisions of Section 80T in respect of capital gains. The assessee had capital gains for the relevant assessment year and at the same time he had also suffered some capital losses. The Tribunal has held that out of the current capital gains, the capital loss suffered by the assessee should have been deducted and then on the net amount of capital gains the assessee should be given benefit under the provisions of Section 80T of the Act.

4. The question referred to us is no more res integra as it has been already decided by this Court in Ashaben & Ors. Vs. C.I.T. reported in (1999) 237 ITR 561 that deduction under Section 80T is admissible with reference to capital gains after setting off capital losses of the said assessment year. We are in respectful agreement with the ratio of the judgement referred to hereinabove and we also come to a conclusion that the Tribunal was right when it deducted capital losses from capital gains and on the net amount of the capital gains, deduction under Section 80T was given to the assessee.

In the circumstances, we decide the first question against the assessee and in favour of the Revenue.

5. So far as the second question is concerned, it pertains to deduction of depreciation in value of shares of Sayaji Mills Ltd. which the assessee had suffered while computing capital gains earned by it by sale of shares of Rajesh Textile Mills Ltd. The assessee had received shares of Rajesh Taxtile Mills Ltd. as right shares on the basis of its holding of shares of Sayaji Mills Ltd. Upon issue of the right shares of Rajesh Textile Mills Ltd., value of shares of Sayaji Mills Ltd. had been substantially reduced and therefore loss was suffered by the assessee due to depreciation in value of the shares of Sayaji Mills Ltd. Following the judgment delivered in the case of Dhan Kapadia Vs. C.I.T. reported in 63 ITR Page 651, this Court has also held in ITR NO. 423/93, decided on 1.9.1998, that depreciation in value of the shares of the company is to be deducted from the capital gains. In the circumstances referred to hereinabove, we answer the second question in favour of the assessee and against the Revenue.

5. In the circumstances, the first question is answered against the assessee and in favour of the Revenue whereas the second question is answered in favour of the assessee and against the Revenue. The Reference stands disposed of with no orders as to costs.

(D.M.Dharmadhikari, CJ)

(A.R.Dave, J)

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